Supreme Court, U.S.
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No. 08-

IN THE

Supreme Court of the United States

MATTHEW SIRMONS and JAMES MILLS,
in their individual capacities,

Petitioners,

v.

MELANIE WILLIAMS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether it was clearly established in May 2005 that a police officer, who already possessed actual probable cause to arrest a fleeing felony suspect, was required to be knowledgeable of all legally cognizable affirmative defenses *and* judge during the chase whether the affirmative defense of necessity/duress had been conclusively established in the suspect's favor before seizing and arresting the fleeing suspect?

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OPINIONS BELOW

The opinion of the Court of Appeals is reported as *Williams v. Sirmons*, 307 Fed. Appx. 354 (11th Cir. 2009). *See* Appendix A. The opinion of the District Court is reported as *Williams v. Sirmons*, 563 F.Supp.2d 1315 (M.D.Fla. 2008). *See* Appendix B.

STATEMENT OF JURISDICTION

On 13 January 2009, the Eleventh Circuit entered judgment. The Petitioners filed a timely petition for rehearing *en banc*, which was denied on 13 March 2009. *See* Appendix C. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND FEDERAL STATUTORY PROVISIONS INVOLVED

Respondent Melanie Williams seeks damages for an alleged violation of her Fourth Amendment rights pursuant to 42 U.S.C. § 1983. The Fourth Amendment to the United States Constitution provides, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ."

STATEMENT OF THE CASE

The Petitioners are police officers who have been denied the benefit of qualified immunity in the face of a Fourth Amendment false arrest claim, even though both the trial court and the Eleventh Circuit panel agreed that they possessed actual probable cause to arrest the

Respondent until mere moments before she was taken into custody. Both courts below held that Respondent's purported affirmative defense of necessity or duress defeated the Petitioners' entitlement to qualified immunity. Based on the Eleventh Circuit's reasoning, a police officer must be knowledgeable of all legally cognizable affirmative defenses *and* be able to judge whether a particular affirmative defense has been conclusively established in the suspect's favor prior to making any arrest, even if the facts establishing the defense do not emerge until the final seconds of a combination vehicle/foot pursuit. This creates a split in the circuits, as other circuits have already considered the issue and determined that consideration of an affirmative defense in the presence of actual probable cause is not required in the qualified immunity context. *See Sands v. McCormick*, 502 F.3d 263, 269 (3d Cir. 2007) ("A police officer has limited training in the law, and requiring him to explore the ramification of the statute of limitations defense is too heavy a burden.").

In essence, the Eleventh Circuit's decision undercuts a long history of jurisprudence throughout the circuits – including the Eleventh – which provides that an officer need only demonstrate the presence of arguable probable cause to benefit from qualified immunity. Although this Court has not directly addressed whether a police officer must consider affirmative defenses when arresting a suspect based upon actual probable cause, the Eleventh Circuit's decision does not comport with Supreme Court precedent regarding the objective standard set by this Court in *Michigan v. DiFillippo*, 443 U.S. 31 (1979).

Additionally, since the public's interest would be harmed by an overly timid police force, the Eleventh Circuit's reasoning has far-reaching, negative public policy implications. The Eleventh Circuit's decision places officers in the untenable position of having to speculate about affirmative defenses even while pursuing fleeing miscreants, as almost any criminal defendant can assert an affirmative defense to the charges against her or him. Thus, if left unreviewed, the Eleventh Circuit's decision will have a detrimental effect on policing throughout the Eleventh Circuit and, if followed by other courts, across the nation.

1. Facts Giving Rise to Case

The following is an exact rendition of the facts, viewed in the light most favorable to the Respondent, from the Eleventh Circuit's decision *(certain undisputed facts have been inserted in italics)*:

> In the early hours of May 8, 2005, Melanie Williams, then seven and a half months pregnant with her first child, noticed that she had begun to bleed vaginally. Concerned, she began to drive herself to St. Vincent's Medical Center. *Williams called 911 while en route to the hospital, but refused the assistance of a fire/rescue paramedic unit. (Doc. 16-9, Williams depo., p. 81-83).* En route, Williams ran a red light. Less than one mile from the hospital, Williams pulled over when signaled to stop by Deputies Sirmons and Mills. After Sirmons approached her car, Williams explained to him that she was pregnant,

bleeding, and on her way to the hospital. *Williams testified during deposition that she was not visibly bleeding when Petitioners stopped her car and there was no blood visible on her car seat or on her pants. (Doc. 16-9, Williams depo., p. 84).* Sirmons appeared unconcerned and requested Williams' drivers' license and proof of insurance and inquired whether she owned the car she was driving. After receiving the requested documents, Sirmons returned to his patrol car to verify her identity and issue a traffic citation. Williams then fled from the stop in her vehicle. Mills and Sirmons pursued Williams with their lights and sirens on.

Williams drove directly to the hospital's emergency vehicle bay with Sirmons and Mills close behind. As Williams exited her car, Sirmons grabbed her arm and told her that she was going to jail. Williams pulled free and ran towards the emergency room yelling, "Help! I'm pregnant and bleeding." *The video depicting Williams running from the officers in the emergency room shows a rapidly sprinting woman who is not visibly pregnant. (Doc. 21).* Williams stopped at two locked doors[1] in the emergency room, still calling out for help. Sirmons caught up to Williams and wrapped his arms around her, causing them both to fall to the floor. Sirmons

[1] There is no evidence that either Sirmons or Mills were aware that these doors were locked.

> dislocated his shoulder in the fall. Sirmons got up, and Mills took Sirmons' place, kneeling atop the prone Williams while he unhurriedly handcuffed her. All the while, Williams was struggling to stand up and pleading with the deputy to get off her stomach because she was pregnant. The deputies then arrested Williams.
>
> Mills took Williams to the patrol car where he allowed her to be examined by a nurse from the hospital. *The St. Vincent's nurse who observed the incident in the emergency room and assessed Williams in the police car had to ask Williams why she was coming to the emergency room and determine from Williams herself that she was pregnant. (Doc. 24-12, Internal Affairs Sworn Statement, p. 3).* Thereafter, Williams was admitted to the hospital and found to be bleeding vaginally and in premature labor. Her physicians successfully staved off the premature labor and Williams was released from the hospital ten days later.[2]

Williams v. Sirmons, 307 Fed. Appx. 354, 356 (11th Cir. 2009).

2. District Court Proceedings

Melanie Williams (Plaintiff/Respondent) sued Matthew Sirmons and James Mills (Defendants/Petitioners) in their individual capacities, claiming that

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[2] There is no evidence that the baby was harmed during the incident.

they falsely arrested her in violation of her Fourth Amendment rights while working as police officers for the Jacksonville Sheriff's Office. (Doc. 2) The Amended Complaint also contained a civil rights claim against Petitioners for engaging in excessive force against Respondent in the course of an investigatory encounter and a Florida state law claim for malicious prosecution. (Doc. 4) State and federal law claims were also made against Sheriff John Rutherford, in his official capacity (the "City"). *Id.*

The District Court granted the City's summary judgment as to the § 1983 claim, denied the City's motion as to the state law claims, and denied Petitioners' motion altogether. (Doc. 36) For summary judgment purposes, the District Court held that, although Petitioners used only *de minimis* force against Respondent, they were not entitled to qualified immunity because they did not show that an officer can benefit from the *de minimis* force rule where the officer knows that the arrestee is particularly fragile, therefore violating clearly established law. (Doc. 36, p. 11) Additionally, the District Court held that even though Petitioners had actual probable cause to arrest Respondent, Respondent acted under "duress" or out of "necessity" and denied Petitioners the benefit of qualified immunity.

3. Decision of the Eleventh Circuit

Petitioners took an interlocutory appeal to the Eleventh Circuit because of the denial of qualified immunity. On 13 January 2009, the Eleventh Circuit issued an opinion whereby the Eleventh Circuit vacated the District Court's Order denying summary judgment

on the Respondent's excessive force claim, but affirmed the District Court's Order denying summary judgment on the Respondent's claim that her arrest violated the Fourth Amendment as unsupported by probable cause. *Williams v. Sirmons*, 307 Fed. Appx. 354 (11th Cir. 2009). The Eleventh Circuit admitted that the Petitioners in the instant case had probable cause to believe that the Respondent committed a felony, and that in general an arresting officer does not have to consider the validity of any possible defenses, citing *Baker v. McCollan*, 443 U.S. 137 (1979). However, the Eleventh Circuit proceeded to hold that qualified immunity should be denied to Petitioners because there is an exception to the rule when an officer has knowledge of facts and circumstances conclusively establishing an affirmative defense, citing the Sixth Circuit case of *Estate of Dietrich v. Burrows*, 167 F.3d 1007 (6th Cir. 1999). The Eleventh Circuit did not explain how this exception was clearly established in the Eleventh Circuit, even though there is absolutely no support for this proposition in any previous opinion of the Eleventh Circuit, the Supreme Court of Florida, or the Supreme Court of the United States.[3]

REASONS FOR GRANTING THE PETITION

The decision below appears to be the first time in our nation's history that a federal court considering

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[3] *See Marsh v. Butler*, 268 F.3d 1014, 1033 (11th Cir. 2001) ("When case law is needed to 'clearly establish' the law applicable to pertinent circumstances, we look to decisions of the U.S. Supreme Court, the United States Court of Appeals for the Eleventh Circuit, and the highest court of the pertinent state.").

qualified immunity has held that probable cause, actually existing during a hot pursuit, can not only melt away in seconds but that the arresting officer's entitlement to qualified immunity can melt away just as quickly. The writ of certiorari also should be allowed because the Eleventh Circuit's decision creates a split among the circuits that have considered whether an arresting officer, who possesses actual probable cause to arrest a suspect, is required by the Constitution to consider affirmative defenses to the prosecution for the offense prior to arresting the suspect. The decision also conflicts with the decisions of this Court that have held that the Constitution permits an officer to arrest a suspect based on probable cause only; it does not require that an officer investigate every claim of innocence. And, this case has significant public policy implications because it unduly shrinks the concept of arguable probable cause as it bears on an officer's claim of qualified immunity.

I. THE DECISION CREATES A SPLIT IN THE CIRCUITS BY CONCLUDING THAT AN OFFICER MUST CONSIDER AN ARRESTEE'S AFFIRMATIVE DEFENSES, EVEN THOUGH THE OFFICER POSSESSES ACTUAL PROBABLE CAUSE TO ARREST WHILE ACTIVELY ENGAGED IN A HOT PURSUIT.

In determining probable cause, the Constitution does not require an officer to consider the validity of possible defenses. As a threshold matter, the existence of probable cause at the time of the arrest is an ". . . absolute bar to a Section 1983 action for false

arrest." *Marx v. Gumbinner*, 905 F.2d 1503, 1505-6 (11th Cir. 1990). Until this decision, this has been the rule of law in every circuit other than–on very narrow facts–the Sixth Circuit. The Eleventh Circuit's decision not only contradicts its own precedent, but contradicts the Third Circuit, which previously determined that an officer need not consider an affirmative defense where an officer possessed actual probable cause. As the Eleventh Circuit considered this case in the manner prescribed by *Saucier v. Katz*, 533 U.S. 194 (2001), the Eleventh Circuit was first required to determine whether a Constitutional violation occurred, then determine whether the alleged violation was clearly established at the time of the alleged violation. *Id.*, 533 U.S. at 210.

Prior to this decision, it was clearly established law in the Eleventh Circuit that police officers were not required to consider affirmative defenses in evaluating probable cause. *Williams v. City of Albany*, 936 F.2d 1256, 1260 (11th Cir. 1991); *Pickens v. Hollowell*, 59 F.3d 1203, 1207 (11th Cir. 1995) ("... we believe that *Williams* makes clear that police officers have no responsibility to determine the viability of a statute of limitations defense . . ."). In the Eleventh Circuit, as to probable cause in general, "the standard for determining the existence of probable cause is the same under both Florida and federal law–whether 'a reasonable man would have believed [probable cause existed] had he known all of the facts known by the officer.'" *Rankin v. Evans*, 133 F.3d 1425, 1433 (11th Cir. 1998) (citations omitted). Probable cause exists "when the facts and circumstances within the officer's knowledge, of which he or she has reasonably trustworthy information, would

cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." *Kingsland v. City of Miami*, 382 F.3d 1220, 1226 (11th Cir. 2004). Applying the aforementioned facts to this standard, the Eleventh Circuit determined

> . . . it is undisputed that Sirmons and Mills lawfully stopped Williams for running a red light and that Williams drove away from the traffic stop before she was given permission to do so in violation of Florida Statute 316.1935, which makes the willful attempt to flee or elude a felony. Accordingly, based on their own observations, the deputies had probable cause to believe Williams had committed a crime.

Williams v. Sirmons, *supra.*, at 358. The Eleventh Circuit should have ended its analysis there, but it did not.

The Eleventh Circuit continued its analysis by agreeing that when an officer makes a probable cause determination, he need not consider the validity of any possible defenses, citing *Baker v. McCollan*, 443 U.S. 137 (1979). But, relying on *Estate of Dietrich v. Burrows*, 167 F.3d 1007 (6th Cir. 1999), the court then opined that an exception exists to this general rule when an officer actually has knowledge of facts and circumstances *conclusively* establishing an affirmative defense. The Eleventh Circuit determined that this exception was clearly established because *Dietrich* references *Carroll v. United States*, 267 U.S. 132 (1925), which simply held

that a warrantless stop and search of a vehicle is permissible if there is probable cause to believe the vehicle contains contraband.

Carroll has no application to the instant matter. While an officer would not normally be required to consider the array of defenses to prosecution when determining probable cause, *Dietrich*, without any particular reliance on *Carroll*, created an exception where an officer has *conclusive* evidence that affords the suspect an affirmative defense. The practical realities of the *Dietrich* holding are that a police officer would be required to study and understand all the legally cognizable affirmative defenses recognized by a state's laws and case precedent and then be able to apply them perfectly in the field to each probable cause determination that presents itself, a function that is normally within the purview of a jury. The Panel's order suggests that legal training normally undertaken during law school and beyond should be imputed to police officers and evaluated and applied in the heat of the moment prior to making an arrest – even during a hot pursuit where probable cause to arrest clearly existed only seconds before the seizure of the suspect. Thus, the Eleventh Circuit's interpretation of *Dietrich* is a significant and inappropriate expansion of the rule enunciated in *Carroll* and its progeny. If the Eleventh Circuit's decision stands, qualified immunity based on *arguable* probable cause will cease to exist in the summary judgment context; there will no longer be qualified immunity absent *actual* probable cause.

The Sixth Circuit retreated somewhat from its ruling in *Dietrich* three years later in *Fridely v.*

Horrighs, 291 F.3d 867 (6th Cir. 2002). There the plaintiff attempted to defeat the defendants' qualified immunity privilege by arguing that the defendants should have known that the plaintiff had the affirmative defense of entrapment. The court explained that a police officer "*may not ignore information known to him* which proves that the suspect is protected by an affirmative legal justification", but "the police officer is not required to inquire into facts and circumstances in an effort to discover if the suspect has an affirmative defense." *Id.* at 873 (emphasis in original). The court, quoting *Painter v. Robertson*, 185 F.3d 557, 571 n.21 (6th Cir. 1999), elaborated:

> This forum emphasizes that it does not mandate that law enforcement operatives should conduct *quasi-trials* as a necessary predicate to the warrantless arrest of perpetrators. . . . Rather, this court . . . merely resolves that, where a reasonable police officer would *conclusively know* that an investigative target's behavior is protected by a legally cognizable affirmative defense, that officer lacks a legal foundation to arrest that person for that behavior.

Fridely, *supra.*, at 873 (emphasis in original).

In contrast, in *Sands v. McCormack*, 502 F.3d 263 (3d Cir. 2007), the Third Circuit since considered whether an officer could be denied qualified immunity where he caused the arrest of a suspect despite *knowing* the

statute of limitations had run. The Third Circuit gave short shrift to the plaintiff's theory:

> Sands' argument is based on the faulty premise that the statute of limitations is a relevant consideration at the time a police officer files charges. . . . Sands would place far more responsibility on police officers than is required by their calling.

Id. at 269. *See also Holman v. Keltanovich*, 2007 WL 3125048 *8 (M.D.Pa.), which squarely held that assertion of the defense of "justification" to trump the existence of probable cause was both "unavailable" and "disingenuous," because ". . . such affirmative defenses are not a relevant consideration in an officer's determination of probable cause."

II. THE ELEVENTH CIRCUIT'S DECISION IS CONTRARY TO THIS COURT'S QUALIFIED IMMUNITY PRECEDENT.

Although the Eleventh Circuit incorrectly determined that a Constitutional violation occurred, it should have nevertheless granted the Petitioners qualified immunity because this theory was not clearly established law at the time of the violation. The second prong of the *Saucier* qualified immunity analysis asks whether the law was so "clearly established" at the time of the incident that every reasonable officer would know his conduct violated the Fourth Amendment. *See Malley v. Briggs*, 475 U.S. 335, 341 (1986) (if "officers of reasonable competence could disagree on th[e] issue, immunity should be recognized").

As this Court has never held that an exception exists to the rule that when an officer makes a probable cause determination he need not consider the validity of any possible defenses, the Eleventh Circuit's decision flies in the face of this Court's qualified immunity jurisprudence. *See, e.g., Scott v. Harris*, 550 U.S. 372 (2007). Not only was the rule not clearly established in every other circuit but, arguably, the Sixth, the rule in the Eleventh Circuit was to the contrary. *See Williams v. City of Albany*, 936 F.2d 1256 (11th Cir. 1991); *Pickens v. Hollowell*, 59 F.3d 1203 (11th Cir. 1995). All interpretations of probable cause require a belief that guilt is reasonable, as opposed to certain. *Hill v. California*, 401 U.S. 797 (1971). For this reason, the evidentiary standard for probable cause is significantly lower than the standard required for conviction. *Michigan v. DeFillipo, supra.* In the present case, a reasonable officer, possessed of the information Petitioners had at the time, could have believed that probable cause existed to arrest Respondent, even though Respondent stated that she was pregnant, bleeding and en route to a hospital. Moreover, Respondent admitted that she was not visibly bleeding; therefore, the officers could have reasonably discounted her claims, as an officer is not required to believe everything a suspect tells him. *Rodriguez v. Farrell*, 294 F.3d 1276, 1278 (11th Cir. 2002), citing *Marx v. Gumbinner, supra*. Clearly, and erroneously, the Eleventh Circuit viewed the facts from the perspective of the fleeing Respondent, not from the perspective of a reasonable officer on the scene, as long ago instructed by this Court. *Graham v. Conner*, 490 U.S. 386 (1989).

Petitioners had ample reason to conclude that probable cause existed in this case: 1) they observed

Williams drive away from the scene of a lawful traffic stop, and 2) they observed Williams refuse to stop once followed. These facts gave rise to actual probable cause to arrest Williams for Fleeing and Attempting to Elude a police officer.[4] Additionally, Williams herself testified that when she stopped her car near the emergency room entrance, Sirmons attempted to take her into custody but she snatched her hand away from him and ran into the emergency room. (Doc. 16-9, p. 99, line 16; p. 100, line 4) This constituted probable cause for the crime of Resisting an Officer Without Violence.[5] There can be no reasonable dispute about this – both the trial court and the Eleventh Circuit ruled in this case that probable cause to arrest Ms. Williams existed during the chase – yet qualified immunity was denied because of the Eleventh Circuit's belief that the officers should have *conclusively known* that Ms. Williams would be able to *successfully assert* the affirmative defense of necessity. Even so, the elements of this defense alone should have confirmed that Petitioners were entitled to qualified immunity. As the court correctly noted, the elements of the necessity defense in Florida require a defendant to prove six things as fact:

> (1) the defendant reasonably believed that a danger or emergency existed that she did not intentionally cause; (2) the danger or emergency threatened significant harm to her

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[4] Fla. Stat. 316.1935, a felony under Florida law. *See* Appendix D.

[5] Fla. Stat. 843.02, a first degree misdemeanor under Florida law. *See* Appendix D.

> or a third person; (3) the threatened harm was real, imminent, and impending; (4) the defendant had no reasonable means to avoid the danger or emergency except by committing the crime; (5) the crime was committed out of duress to avoid the danger or emergency; and (6) the harm the defendant avoided outweighs the harm caused by committing the crime.

Williams v. Sirmons, supra., at 359. Each of these factors involved either Ms. Williams' internal state of mind during the incident or some other aspect of the circumstances about which the officers could only have speculated and could not possibly have known *conclusively*. How, then, can they have been expected to make a judgment such as the courts below later required; particularly, at the risk of forfeiting qualified immunity as a consequence of error?

This Court recognized in *Anderson v. Creighton*, 483 U.S. 635 (1987), that police officers will in some cases reasonably, but mistakenly, conclude that probable cause is present and subsequently not be held personally liable. From this rule, the theory of "arguable probable cause" developed in qualified immunity cases, holding that an officer need not possess actual probable cause but only "arguable probable cause," *i.e.*, the facts and circumstances must be such that the officer reasonably could have believed that probable cause existed.[6] Here,

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[6] *Cox v. Hainey*, 391 F.3d 25 (1st Cir. 2004); *Escalera v. Lunn*, 361 F.3d 737 (2d Cir. 2004); *Graves v. City of Coeur D'Alene*, 339

(Cont'd)

even if probable cause is found not to have existed in the last moments of the chase, certainly arguable probable remained to believe that the Respondent had committed at least one of the crimes for which she was arrested. *See Sullivan v. City of Pembroke Pines*, 161 Fed. Appx. 906, 909-910 (11th Cir. 2006) (it is Resisting Without Violence for female to continually approach officer to interrupt investigation after being told to return to her vehicle); *Zivojinovich v. Barner*, 525 F.3d 1059, 1071-72 (11th Cir. 2008) (standing up in disobedience to an officer's direction to sit down is Resisting Without Violence). Accordingly, Petitioners had, at minimum, arguable probable cause to believe that they could reasonably detain Respondent, and arrest her if she resisted, while investigating the crime of Fleeing and Attempting to Elude.

Nonetheless, in the face of this rich web of law and fact, the Eleventh Circuit, viewing the facts from the perspective of the fleeing suspect instead of from the perspective of the officers on the scene, crafted a novel theory and pronounced it clearly established. As shown above, the Eleventh Circuit inexplicably determined that this exception had been "clearly established" because *Dietrich* referenced *Carroll*, which has no application to the instant matter. *Dietrich*, without reliance on *Carroll*, created the Eleventh Circuit's

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(Cont'd)

F.3d 828 (9th Cir. 2003); *Gomez v. Atkins*, 296 F.3d 253 (4th Cir. 2002); *Mendenhall v. Riser*, 213 F.3d 226 (5th Cir. 2000); *Wollin v. Gondert*, 192 F.3d 616 (7th Cir. 1999); *Montoute v. Carr*, 114 F.3d 181 (11th Cir. 1997); *Habiger v. City of Fargo*, 80 F.3d 289 (8th Cir. 1996).

exception, an exception not recognized anywhere beyond the borders of the Sixth Circuit, even if there, until now. Thus, it was *far* from clearly established that Petitioners should have taken into account, while sprinting after the Respondent, the possibility that she might later be able to prove all six elements of the "necessity" defense to the satisfaction of a fact-finder having the benefit of leisurely hindsight.

III. THIS CASE HAS SIGNIFICANT PUBLIC POLICY IMPLICATIONS FOR EFFECTIVE LAW ENFORCEMENT AND CRIME PREVENTION.

The Eleventh Circuit's decision heralds the advent of police work that is borderline bereft of discretion. Our citizens benefit from law enforcement that is assertive in meeting its duty of ferreting out crime, a mission that requires a reasonable, constitutional amount of leeway. An element of such permissible discretion is that officers in the field should be allowed and enabled to focus on the job at hand, especially in tense situations such as vehicle or foot pursuits of fleeing felons, without being required to make hyper-technical legal calls along the way that might cause them to hesitate and lose chase or, as an alternative, expose themselves to personal liability for electing to do their job as reasonably understood. Thus, as applied to this case, it was unreasonable to expect the Petitioners to break off their pursuit of the Respondent, a fleeing felon, merely because she ran into a hospital, and now deny Petitioners the benefit of qualified immunity because they made a reasonable mistake.

In determining whether a warrantless arrest can be supported, requiring on-the-spot judgments on rare

and uncertain legal defenses is much more exacting than the arguable probable cause standard currently required. Qualified immunity presently affords an "accommodation for reasonable error . . . because 'officials should not err always on the side of caution' because they fear being sued." *Hunter v. Bryant*, 502 U.S. 224, 229 (1991), *quoting Davis v. Scherer*, 468 U.S. 183, 196 (1984). Plainly stated, the decision in this case is a retreat from the shelter of reasonable accommodation and an invitation to more frequent error or worse. It should not be allowed to stand.

CONCLUSION

This is a case of significant dimension for the law enforcement mission in the Eleventh Circuit and the nation at large. For the foregoing reasons, Petitioners Matthew Sirmons and James Mills respectfully request the decision of the Eleventh Circuit be summarily reversed, or alternatively, that the Supreme Court grant review of this matter.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED AND FILED JANUARY 13, 2009

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 08-13218
Non-Argument Calendar

D. C. Docket No. 06-00686-CV-J-33-MCR

MELANIE WILLIAMS,

Plaintiff-Appellee.

versus

MATTHEW SIRMONS, JAMES MILLS,

Defendants-Appellants,

SHERIFF JOHN RUTHERFORD
of the Jacksonville Sheriff's Office,

Defendant.

Appeal from the United States District Court
for the Middle District of Florida

(January 13, 2009)

Before BIRCH, HULL and KRAVITCH, Circuit Judges.

Appendix A

PER CURIAM:

Melanie Williams brought suit against Deputy Matthew Sirmons, Deputy James Mills, and Sheriff John Rutherford of the Jacksonville Sheriff's Office, alleging, *inter alia*, that Mills and Sirmons used excessive force against her in violation of 42 U.S.C. § 1983. Deputies Mills and Sirmons moved for summary judgment, arguing that they were entitled to the defense of qualified immunity. The district court denied the deputies' motion. Sirmons and Mills appeal.

As an initial matter, we note that a district court's order denying a defendant's motion for summary judgment grounded on a claim of qualified immunity is immediately appealable despite there being disputed issues of fact, unless the only disputed issue is whether the evidence could support a finding that particular conduct occurred. *Behrens v. Pelletier*, 516 U.S. 299, 312, 116 S.Ct. 834, 133 L.Ed.2d 773 (199€). Accordingly, we have jurisdiction to review the district court's legal analysis in denying qualified immunity, even though the district court noted that material issues of fact remain. *Cottrell v. Caldwell*, 85 F.3d 1480, 1485 (11th Cir.1996).

BACKGROUND

The parties dispute several key facts in this case; however, in determining the facts for summary judgment purposes, we, like the district court, are required to view the evidence in the light most favorable to the nonmoving party. *Celotex Corp. v. Catrett*, 477 U.S. 317,

322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Under this standard, the evidence supports the following facts:

In the early hours of May 8, 2005, Melanie Williams, then seven and a half months pregnant with her first child, noticed that she had begun to bleed vaginally. Concerned, she began to drive herself to St. Vincent's Medical Center. En route, Williams ran a red light. Less than one mile from the hospital, Williams pulled over when signaled to stop by Deputies Sirmons and Mills. After Sirmons approached her car, Williams explained to him that she was pregnant, bleeding, and on her way to the hospital. Sirmons appeared unconcerned and requested Williams' drivers' license and proof of insurance and inquired whether she owned the car she was driving. After receiving the requested documents, Sirmons returned to his patrol car to verify her identity and issue a traffic citation. Williams then fled from the stop in her vehicle. Mills and Sirmons pursued Williams with their lights and sirens on.

Williams drove directly to the hospital's emergency vehicle bay with Sirmons and Mills close behind. As Williams exited her car, Sirmons grabbed her arm and told her that she was going to jail. Williams pulled free and ran towards the emergency room yelling, "Help! I'm pregnant and bleeding." Williams stopped at two locked doors in the emergency room, still calling out for help. Sirmons caught up to Williams and wrapped his arms around her, causing them both to fall to the floor. Sirmons dislocated his shoulder in the fall. Sirmons got up, and Mills took Sirmons' place, kneeling atop the

prone Williams while he unhurriedly handcuffed her. All the while, Williams was struggling to stand up and pleading with the deputy to get off her stomach because she was pregnant. The deputies then arrested Williams.

Mills took Williams to the patrol car where he allowed her to be examined by a nurse from the hospital. Thereafter, Williams was admitted to the hospital and found to be bleeding vaginally and in premature labor. Her physicians successfully staved off the premature labor and Williams was released from the hospital ten days later.

Williams sued Sirmons and Mills under 42 U.S.C. § 1983 for alleged violations of her Fourth Amendment rights during her arrest.[1] At the conclusion of discovery, Sirmons and Mills moved for summary judgment, arguing that they were entitled to qualified immunity because a reasonable officer could have believed that there was probable cause for the arrest and that their use of de minimis force in arresting Williams was lawful and necessary under the circumstances. The district court denied the deputies' motion, finding that there was sufficient record evidence to justify the conclusion (1) that Williams' arrest was not founded upon probable cause and therefore any use of force was unauthorized and (2) that the force used was excessive under these circumstances. Accordingly, the district court found that

1. Williams also sued the deputies for malicious prosecution under state law and Sheriff Rutherford in his official capacity under § 1983 and for false arrest and battery under state law. These claims are not at issue in this appeal.

the deputies were not entitled to the defense of qualified immunity as a matter of law.

STANDARD OF REVIEW

We review a denial of a motion for summary judgment on qualified immunity grounds *de novo*, applying the same standard as required in the district court.[2] *Cottrell*, 85 F.3d at 1485. Summary judgment may be granted only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp.*, 477 U.S. at 322-23, 106 S.Ct. 2548.

DISCUSSION

In a civil rights action under § 1983, the doctrine of qualified immunity might shield law enforcement officers from liability. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). Pursuant to this doctrine, law enforcement officers are entitled to qualified immunity so long as the alleged civil damages arose from the officers' discharge of their discretionary functions and their conduct "could reasonably have been

2. We note that "a defendant who does not win summary judgment on qualified immunity grounds may yet prevail on those grounds at or after trial on a motion for a judgment as a matter of law." *Cottrell*, 85 F.3d at 1487 (citing *Kelly v. Curtis*, 21 F.3d 1544, 1546 (11th Cir.1994)). In this interlocutory appeal, we decide only whether the evidence, construed in the light most favorable to the plaintiff, required the district court to grant summary judgment on qualified immunity grounds.

thought consistent with the rights they are alleged to have violated." *Anderson v. Creighton*, 483 U.S. 635, 638, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987). Qualified immunity does not provide a mere defense to liability, but rather a complete immunity from suit. *Saucier v. Katz*, 533 U.S. 194, 200-01, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001). *Saucier* instructs that summary judgment based on qualified immunity is appropriate at the earliest stages of litigation "[i]f the law did not put the officer on notice that his conduct would be clearly unlawful." 533 U.S. at 202, 121 S.Ct. 2151.

To claim qualified immunity, the officer first must show that he was acting within his discretionary authority when the alleged violation occurred. *Kesinger v. Herrington*, 381 F.3d 1243, 1248 (11th Cir.2004); *Vinyard v. Wilson*, 311 F.3d 1340, 1346 (11th Cir.2002). Once this is shown, "the burden shifts to the plaintiff to show that the official is not entitled to qualified immunity." *Skop v. City of Atlanta*, 485 F.3d 1130, 1137 (11th Cir.2007). To avoid summary judgment on the basis of qualified immunity, the plaintiff must show that "(1) the defendant violated a constitutional right, and (2) this right was clearly established at the time of the alleged violation." *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1264 (11th Cir.2004). These two inquiries must be followed in this order "to set forth principles which will become the basis for a [future] holding that a right is clearly established." *Scott v. Harris*, 550 U.S. 372, 372, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007) (alteration in original) (quotation marks omitted).

In this case, it is uncontested that Deputies Sirmons and Mills were acting pursuant to their discretionary authority in pursuing and arresting Williams. Accordingly, the burden is upon Williams to show that the deputies violated her clearly established constitutional rights. Williams calls her § 1983 claim one for "excessive force;" however, she actually alleges and presents evidence of two separate constitutional violations, which the district court fully addressed: (1) that the deputies did not have probable cause to arrest Williams and (2) that the deputies used excessive force in effecting her arrest. Although both issues are framed under the rubric of excessive force, the probable-cause question is distinct from the excessive-force claim. *Hadley v. Gutierrez*, 526 F.3d 1324, 1329 (11th Cir.2008) (holding that "a genuine 'excessive force' claim relates to the manner in which an arrest was carried out, independent of whether law enforcement had the power to arrest"). Accordingly, we address these two alleged violations separately.

A. Probable Cause

Pursuant to the Fourth Amendment, a police officer must have probable cause to make a warrantless arrest. *Rodriguez v. Farrell*, 280 F.3d 1341, 1345 (11th Cir.2002). Probable cause to arrest exists when law enforcement officials have facts and circumstances within their knowledge sufficient to warrant a reasonable belief that the suspect had committed or was committing a crime. *United States v. Floyd*, 281 F.3d 1346, 1348 (11th Cir.2002); *Rankin v. Evans*, 133 F.3d 1425, 1433 (11th

Cir.1998) (explaining that "the standard for determining the existence of probable cause is the same under both Florida and federal law"). "In the context of a claim for false arrest, an officer is entitled to qualified immunity where that officer had 'arguable probable cause' " to effectuate the arrest. *Davis v. Williams*, 451 F.3d 759, 762-63 (11th Cir.2006). Arguable probable cause exists where an objectively reasonable officer in the same circumstances and possessing the same knowledge as the officers effectuating the arrest could have believed that probable cause existed. *See Thornton v. City of Macon*, 132 F.3d 1395, 1399 (11th Cir.1998).

In this case, it is undisputed that Sirmons and Mills lawfully stopped Williams for running a red light and that Williams drove away from the traffic stop before she was given permission to do so in violation of Florida Statute § 316.1935, which makes the willful attempt to flee or elude an officer a felony. Accordingly, based on their own observations, the deputies had probable cause to believe Williams had committed a crime. Williams argues, however, that the deputies knew or should have known that she was justified in leaving the traffic stop due to her medical emergency, which provided an affirmative defense to her criminal conduct and removed the probable cause for her arrest.

Generally, in determining probable cause an arresting officer does not have to consider the validity of any possible defense. *Baker v. McCollan*, 443 U.S. 137, 145-46, 99 S.Ct. 2689, 61 L.Ed.2d 433 (1979). An exception to the general rule exists, however, when the

arresting officer actually has knowledge of facts and circumstances conclusively establishing an affirmative defense. In *Estate of Dietrich v. Burrows*, 167 F.3d 1007 (6th Cir.1999), the Sixth Circuit considered whether the defendant police officers were entitled to a qualified immunity defense against a Fourth Amendment claim arising out of their arrest of the plaintiffs who claimed they had been arrested without probable cause. The court said: "The law has been clearly established since at least the Supreme Court's decision in *Carroll v. United States*, 267 U.S. 132, 162, 45 S.Ct. 280, 69 L.Ed. 543 (1925), that probable cause determinations involve an examination of all facts and circumstances *within an officer's knowledge at the time of an arrest.*" *Id.* (emphasis in original). Because the officers "had full knowledge of facts and circumstances that conclusively established, at the time of the . . . arrests, that the plaintiffs were justified—by statute—in carrying concealed weapons during their work," the court concluded defendant police officers lacked probable cause to believe the plaintiffs violated the law. *Dietrich*, 167 F.3d at 1012. The court held therefore that the defendants were not entitled to qualified immunity. *Id.*

We are persuaded by *Dietrich* and agree that in determining whether probable cause to arrest exists, an officer must consider all facts and circumstances within that officer's knowledge, including facts and circumstances conclusively establishing an affirmative defense. *See also Marx v. Gumbinner*, 905 F.2d 1503, 1506 (11th Cir.1990) (explaining that probable cause is "judged not with clinical detachment but with a common

sense view to the realities of normal life"); *Painter v. Robertson*, 185 F.3d 557, 571 (6th Cir.1999) (stating that an officer "in assessing probable cause to effect an arrest, may not ignore information known to him which proves that the suspect is protected by an affirmative legal justification for his suspected criminal actions"); *Radich v. Goode*, 886 F.2d 1391, 1396-97 (3d Cir.1989) (assuming without deciding that in determining probable cause the arresting officers should consider facts establishing affirmative defenses). That is, if an officer has knowledge of facts and circumstances which establish an affirmative defense, he or she lacks probable cause to arrest, even when the facts and circumstances establish that the person meets all elements of the offense.

Under Florida law, necessity or duress is an affirmative defense to the crime of fleeing or eluding a police officer, as codified under Fla. Stat. § 316.1935. *See Rowley v. State*, 939 So.2d 298, 300 (Fla.Ct.App. 2006). The elements of the defense are (1) the defendant reasonably believed that a danger or emergency existed that she did not intentionally cause; (2) the danger or emergency threatened significant harm to her or a third person; (3) the threatened harm was real, imminent, and impending; (4) the defendant had no reasonable means to avoid the danger or emergency except by committing the crime; (5) the crime was committed out of duress to avoid the danger or emergency; and (6) the harm the defendant avoided outweighs the harm caused by committing the crime. *Driggers v. State*, 917 So.2d 329, 331 (Fla.Ct.App.2005).

In this case, the evidence taken in the light most favorable to Williams establishes that the deputies knew

from their interview with her during the traffic stop that Williams was pregnant, bleeding, in distress, and on her way to the hospital for emergency treatment. The deputies, however, detained Williams in order to write a traffic citation. Immediately thereafter, the deputies observed Williams drive away from the traffic stop without permission and proceed directly to a hospital less than one mile away, where she exited her car, ran towards the emergency room, and called out, "Help! I'm pregnant and bleeding." Because they followed her directly from the traffic stop where she claimed to need medical attention to the hospital where she immediately asked for help, the deputies should have known that Williams was not acting willfully to flee officers; rather, she was acting under necessity. A reasonable officer would have known, given this particular set of circumstances, that Williams' flight from the traffic stop was justified by the affirmative defense of necessity or duress. For this reason, the deputies lacked arguable—much less actual—probable cause to arrest, even though the circumstances established that Williams met all elements of the offense of fleeing or eluding a police officer. The deputies, therefore, are not entitled to the defense of qualified immunity as a matter of law for Williams' claim that the arrest was unsupported by probable cause and the district court properly denied summary judgment on this ground.

If no probable cause authorizes an arrest, *any* use of force to effectuate the unlawful arrest is a violation of the Fourth Amendment. *Bashir v. Rockdale County, Ga.*, 445 F.3d 1323, 1331-33 (11th Cir.2006); *Reese v. Herbert*, 527 F.3d 1253, 1272 (11th Cir.2008) (holding that although the use of force below a de minimis threshold ordinarily will

not be actionable, even de minimis force will violate the Fourth Amendment if the officer is not entitled to arrest or detain the suspect). This rule makes sense because if a stop or arrest is illegal, "then there is no basis for any threat or any use of force, and an excessive force claim would always arise but only collaterally from the illegal stop or arrest claim." *Jackson v. Sauls*, 206 F.3d 1156, 1170-71 (11th Cir.2000). A plaintiff's damages for unlawful arrest, therefore, include damages for any injury, pain and suffering, and mental anguish caused by the force used to effect that false arrest, regardless of whether the force would have been reasonable or excessive had there been probable cause. *Williamson v. Mills*, 65 F.3d 155, 158-59 (11th Cir.1995). Accordingly, to the extent Williams asserts that the force was excessive as unjustified by probable cause, this claim is subsumed into and included within her unlawful arrest claim. *Id.*

C. Excessive Force[3]

Pursuant to the Fourth Amendment, an officer may not use excessive force in the course of a lawful arrest. *Graham v. Connor*, 490 U.S. 386, 388, 394-95, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). Likewise, a police officer

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3. In addition to claiming that the use of force in her arrest was illegal as unsupported by probable cause, Williams also asserts as a discrete claim that the deputies' force was excessive, assuming her arrest was legal. Accordingly, although there are genuine issues of material fact as to whether probable cause existed for her arrest, we also address whether, assuming probable cause *did* exist, summary judgment based on qualified immunity is merited on Williams' excessive force claim.

with the ability to do so must intervene to stop another police officer's use of excessive force. *Priester v. City of Riviera Beach, Fla.*, 208 F.3d 919, 924-25 (11th Cir.2000). The Supreme Court instructs that "[d]etermining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." *Graham*, 490 U.S. at 396, 109 S.Ct. 1865. As in other Fourth Amendment contexts, the "reasonableness" inquiry in an excessive force case is an objective one: "the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397, 109 S.Ct. 1865. In making this determination, we examine such factors as "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [s]he is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 396, 109 S.Ct. 1865.

It is well established in this circuit that where an arrest is supported by probable cause, the application of de minimis force as needed to effect the arrest, without more, will not support a claim for excessive force in violation of the Fourth Amendment. *See Nolin v. Isbell*, 207 F.3d 1253 (11th Cir.2000). This is the case because "the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect

it," *Graham*, 490 U.S. at 396, 109 S.Ct. 1865, and we "recognize that the typical arrest involves some force and injury." *Rodriguez v. Farrell*, 280 F.3d 1341, 1351 (11th Cir.2002). "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers" violates the Fourth Amendment. *Graham*, 490 U.S. at 396, 109 S.Ct. 1865 (citing *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir.1973)).

In this case, the evidence presented by Williams establishes that after Williams ran away from the deputies, Deputy Sirmons grabbed Williams from behind and pulled her to the ground and that Deputy Mills placed his knee on her back and put his weight upon her in order to handcuff her. Once Williams was restrained, no further force was used against her. Williams presents no evidence that she was injured as a result of the force; accordingly, we must characterize the use of force is as de minimis. *See Rodriguez*, 280 F.3d at 1351; *Nolin*, 207 F.3d at 1258 n. 4.

The district court, applying the *Graham* factors, found that the need for force was slight because (1) the crime at issue was neither severe nor minor, (2) Williams objectively posed no threat to others, and (3) she was no longer fleeing because she was stopped by two locked doors. The district court further found that although a minimal amount of force and injury usually is objectively reasonable in the course of a lawful arrest, the force used in this case was nonetheless unreasonable. In reaching this conclusion, the district court relied upon *Rodriguez v. Farrell*, in which this court held that de

minimis force was objectively reasonable even when it resulted in serious injury, if the officer performing the arrest was unaware that the force would aggravate a preexisting medical condition. 280 F.3d at 1351. Extrapolating from this holding, the district court reasoned that de minimis force could be unreasonable if the officer was aware that an arrestee had a preexisting condition making her particularly susceptible to injury. Applying this logic to the facts of this case, the court found that because the need for force was slight and because the deputies knew from Williams' visibly pregnant body that she was "particularly vulnerable to what would otherwise be de minimis force," their use of even minimal force was unreasonable.

Reluctantly, we must disagree with the district court. First, we disagree with its analysis of the *Graham* factors. Although we agree with the district court that Williams did not objectively pose a threat to the officers or others, we conclude that eluding an officer—a felony under Florida law—is a very serious crime and that the deputies reasonably believed that Williams was resisting arrest and attempting to flee.[4] Under these circumstances and assuming that probable cause existed, the deputies were objectively reasonable in believing that the application of some degree of force was necessary to effect an arrest.

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4. We disagree with the district court's finding that because Williams had reached a set of locked doors, she was no longer fleeing. The evidence shows that Williams reached the doors only one or two seconds before Deputy Sirmons. Considered objectively, there was not enough time for Deputy Sirmons to know whether or not Williams was still attempting to flee.

Furthermore, we disagree with the district court's interpretation of our dicta in *Rodriguez*. In that case, we suggest that where an officer knows of an arrestee's particular vulnerability and nonetheless applies a degree of force which causes serious injury, that force, under some circumstances, may be considered excessive, even if the force used would not have harmed a less vulnerable person.[5] In other words, where an otherwise minimal amount of force causes serious injury and the officer *knew* it would cause serious injury, the application of such minimal force may not be objectively reasonable. Nothing in *Rodriguez* suggests, however, that a minimal amount of force against a fragile arrestee which results in a *minimal* injury—of the sort that would be expected from a typical arrest of a resisting arrestee—is sufficient to support an excessive force claim. Accordingly, our dicta in *Rodriguez* is not inconsistent with our conclusion in *Nolin* that evidence establishing only " *the minimal amount of force and injury* involved in a typical arrest" will not support a claim for excessive force. 207 F.3d at 1258 (emphasis added).

Unlike the arrestee in *Rodriguez*, who was seriously injured by an otherwise de minimis use of force, Williams was—miraculously—not harmed by the deputies' use of force in restraining her. Accordingly, the exception

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5. This is not to suggest that an officer is never justified in using more than de minimis force against an arrestee with a known pre-existing condition. Many factors may justify such a use of force so long as the potential for serious injury is balanced against the "countervailing governmental interests at stake." *Graham*, 490 U.S. at 396, 109 S.Ct. 1865.

suggested by our dicta in *Rodriguez* is not applicable in this case. We need not decide what amount of force is reasonable when an officer is aware that an arrestee is particularly susceptible to injury; however, we have no choice but to conclude that the force was reasonable where an officer causes no injuries in the course of effecting a lawful arrest, despite the fact that the arrestee is particularly susceptible to injury.[6]

For these reasons, although we agree with the district court that the deputies' behavior was reprehensible, we disagree that the evidence supports a finding that the force was excessive if there was probable cause for an arrest. Accordingly, we conclude that summary judgment is appropriate on Williams' excessive force claim.

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6. We note, however, that even a use of force that results in de minimis injuries may be excessive if the force is unreasonably applied to an unresisting arrestee *after* she has been restrained. *See Lee v. Ferraro*, 284 F.3d 1188, 1192 (11th Cir.2002) (holding that, although the only injuries were de minimis bruises, officer's slamming arrestee's head onto the trunk of her car was objectively unreasonable where arrestee was unresisting and handcuffed). In this case, there is no evidence that any force was used against Williams once she was successfully restrained.

Appendix A

CONCLUSION

For the foregoing reasons, we **AFFIRM** the district court's order denying summary judgment on Williams' claim that her arrest violated the Fourth Amendment as unsupported by probable cause, **VACATE** the district court's order denying summary judgment on Williams' claim that the deputies used excessive force in a lawful arrest, and **REMAND** for further proceedings consistent with this opinion.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION DATED AND FILED MAY 27, 2008

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 3:06-cv-686-J-33MCR

MELANIE WILLIAMS,

Plaintiff,

v.

MATTHEW SIRMONS, JAMES MILLS, and SHERIFF JOHN RUTHERFORD of the Jacksonville Sheriff's Office,

Defendants.

ORDER

This cause comes before the Court pursuant to two motions for summary judgment, one filed by the defendant police officers on February 25, 2008, (Doc. # 15), and the other filed by the defendant sheriff on February 28, 2008, (Doc. # 18). Williams filed a response to each (Doc. # 23; Doc. # 24). For the reasons that follow, summary judgment is granted in part and denied in part. Specifically, the Court grants summary judgment for the sheriff on Williams' § 1983 claim, and denies summary judgment on all remaining claims.

Appendix B

I. Background[1]

On May 8, 2005, Melanie Williams, then seven and a half months pregnant with her first child, was arrested on various charges stemming initially from a traffic stop made by Officers Sirmons and Mills. Force was used in the arrest, and both Williams and Officer Sirmons were injured.

The incident began when Williams observed bleeding that appeared to indicate something was wrong with her pregnancy. (Doc. # 23, at 1.) She got in her car and began driving herself to the hospital with which her obstetrician had a relationship. (Doc. # 23, at 2.) En route, she dialed 911. (Doc. # 23, at 2.) The 911 operator asked if she wanted to pull over and await an ambulance, but Williams declined because she believed she would make it to the hospital sooner by continuing on by herself. (Doc. # 23, at 2.)

It appears Williams ran a red light on her way to the hospital. Sirmons and Mills, riding together in Sirmons' patrol car, signaled Williams to stop. She did so, and this was less than a mile from the hospital (Doc. # 28-2, at 29 (Williams Depo. at 111)). Sirmons approached the driver's door of Williams' car. According to Williams, she told Sirmons through the window that

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1. There is record evidence supporting each fact recounted. Because the questions raised by the defendants' motions for summary judgment are primarily legal, though, the Court does not describe in detail the nature of all factual disputes or the competing evidence supporting each side in these disputes.

she was pregnant, bleeding, and on her way to the hospital. (Doc. # 23, at 3.) According to Sirmons and Mills, Williams never said anything about being pregnant. Despite this, Sirmons testified in his deposition that he "offered her rescue assistance" (Doc. # 28-4, at 31 (Sirmons Depo.)), but that Williams declined (Doc. # 28-4 at 32 (Sirmons Depo.)). Williams testified in her own deposition that Sirmons did not offer her rescue assistance. (Doc. # 28-2, at 25 (Williams Depo. at 95).) Instead, he requested her drivers' license and proof of insurance, and inquired whether Williams owned the car she was driving. (Doc. # 28-2, at 24-25 (Williams Depo. at 93-96).) Sirmons returned to his patrol car with these documents in hand, and Williams drove off for the hospital.

Williams drove directly to the hospital's emergency vehicle bay with Sirmons and Mills close behind. As Williams alighted, Sirmons grabbed Williams' arm and told her she was going to jail. (Doc. # 28-2, at 26 (Williams Depo. at 99).) Williams pulled free and ran into the emergency room yelling, "help, I'm pregnant and bleeding." (Doc. # 28-2, at 26 (Williams Depo. at 100).) According to witnesses who were waiting in the emergency room at the time, Williams stopped at two locked doors in the emergency room, still begging for help. (Doc. # 28-6, at 2; Doc. # 28-7, at 2.) Just then, Sirmons jumped on Williams and slammed her to the floor, dislocating his shoulder in the process. (Doc. # 28-6, at 2; Doc. # 28-7, at 2.) Sirmons got up, and Mills took Sirmons' place, kneeling atop the prone Williams while he handcuffed her. (Doc. # 28-6, at 2-3.) All the

while, Williams pleaded with the officer to get off her stomach because she was pregnant. (Doc. # 28-6, at 3.)

Sirmons and Mills describe this scuffle in the emergency room differently. According to them,

> Officer Sirmons managed to catch up with [Williams] and again attempted to take her into custody. However, [Williams] continued to resist Officer Sirmons. As Officer Sirmons attempted to grab hold of her upper body, [Williams] immediately went to her knees, causing Officer Sirmons to lose his balance and fall. As a result of the fall, Officer Sirmons dislocated his right shoulder.

(Doc. # 15, at 5 (citations omitted).) At that point, Mills took Williams into custody using a "softball" handcuffing technique, which required him briefly to shift part of his weight onto her. (Doc. # 15, at 5.) Only after she was handcuffed did Williams first say she was pregnant. (Doc. # 15, at 5.)

There is no disagreement that Mills next took Williams to the patrol car where she was examined by a nurse from the hospital.[2] Williams was admitted to the hospital and found to be bleeding and in premature

2. Williams explained that Mills only allowed the nurse to examine her after the nurse *insisted* on performing the examination. (Doc. # 23, at 6.) Sirmons and Mills, by contrast, say that they never interfered with Williams' post-arrest care. (Doc. # 15, at 6.)

labor. Her physicians "successfully staved off the premature labor," and Williams was released from the hospital on May 18. (Doc. # 23, at 6.) "Her child was born on June 1, several weeks premature." (Doc. # 23, at 6.) The sheriff disciplined Sirmons and Mills for misconduct.

Williams sued Sirmons and Mills for excessive force under 42 U.S.C. § 1983, and for malicious prosecution under state law. Williams also sued Sheriff Rutherford in his official capacity for failing to train Sirmons and Mills under § 1983, and for false arrest and battery under state law. Sirmons and Mills now argue that they are entitled to summary judgment because they benefit from qualified immunity. Specifically, they submit that they had probable cause—or at least arguable probable cause—to arrest Williams. Additionally, the force they used to arrest Williams was not unreasonable. Sheriff Rutherford joins in these arguments, but adds also that the sheriff is not liable under § 1983 even if the officers themselves are. This is because the sheriff was not a moving force behind the actions of the officers.

II. Standard of Decision

The Court should render summary judgment "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The moving party bears the initial burden of showing the court, by reference to materials on file, that there are

no genuine issues of material fact that should be decided at trial. *Hickson Corp. v. N. Crossarm Co., Inc.*, 357 F.3d 1256, 1260 (11th Cir.2004) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)). "When a moving party has discharged its burden, the non-moving party must then 'go beyond the pleadings,' and by its own affidavits, or by 'depositions, answers to interrogatories, and admissions on file,' designate specific facts showing that there is a genuine issue for trial." *Jeffery v. Sarasota White Sox, Inc.*, 64 F.3d 590, 593-94 (11th Cir.1995) (citing *Celotex*, 477 U.S. at 324, 106 S.Ct. 2548).

If there is a conflict between the parties' allegations or evidence, the non-moving party's evidence is presumed to be true and all reasonable inferences must be drawn in the non-moving party's favor. *Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1164 (11th Cir.2003). "If a reasonable fact finder evaluating the evidence could draw more than one inference from the facts, and if that inference introduces a genuine issue of material fact, the court should not grant summary judgment." *Samples ex rel. Samples v. City of Atlanta*, 846 F.2d 1328, 1330 (11th Cir.1988) (citing *Augusta Iron & Steel Works, Inc. v. Employers Ins. of Wausau*, 835 F.2d 855, 856 (11th Cir.1988)).

III. Discussion

A. Malicious Prosecution Count Against Officers Sirmons and Mills

Sirmons and Mills argue that they are entitled to summary judgment on Williams state-law malicious prosecution claim against them. They correctly note that absence of probable cause is an element of a malicious prosecution claim under Florida law. *See Kingsland v. City of Miami*, 382 F.3d 1220, 1234 (11th Cir.2004) (explaining that Florida law requires absence of probable cause as an element of the tort of malicious prosecution). They then submit that they had probable cause to arrest Williams for driving away from the initial traffic stop, which is itself a felony under section 316.1935, Florida Statutes.[3]

Williams counters that a reasonable jury could find Sirmons and Mills did not have probable cause in this case. (Doc. # 23, at 19.) Apparently, this is because Williams would have had a necessity, or even self-defense,

3. The officers also maintain that they had at least *arguable* probable cause to arrest Williams. "[O]fficers who make an arrest without probable cause are entitled to qualified immunity if there was arguable probable cause for the arrest." *Kingsland*, 382 F.3d at 1232. The doctrine of qualified immunity, however, does not operate as shield from state-law tort claims. *See Jordan v. Mosley*, 487 F.3d 1350, 1357 (11th Cir.2007) (explaining that police officer's immunity on state-law claims derives from state law rather than qualified immunity). And Williams' malicious prosecution claim is a state-law tort claim, not a federal claim under § 1983. (Doc. # 23, at 19.)

defense to prosecution for driving away from the initial traffic stop. (*See* Doc. # 23, at 9 (suggesting that Williams' purportedly criminal actions may have been subject to a claim of self-defense).) And the officers knew sufficient facts from which they could determine that Williams' actions, though on their face criminal, were actually justified.

Sirmons and Mills indeed observed sufficient facts to give rise to probable cause to believe Williams was engaged in criminality. There is no genuine question that they observed Williams drive away from a traffic stop before she was given permission. On its face, that conduct violated section 316.1935, Florida Statutes. But there is a genuine question whether the officers also had other information. Williams raises a genuine question whether, by the time they sought charges against her, the officers had been informed by Williams that she was pregnant, bleeding, and seeking emergency medical treatment. Moreover, the officers were aware that Williams had driven straight to a nearby hospital, had run into the emergency room, and had requested medical treatment. Finally, they learned from a nurse that Williams was indeed pregnant and in medical distress. Probable cause exists "when the facts and circumstances within the officer's knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." *Kingsland*, 382 F.3d at 1226 (internal quotation marks omitted). All the facts presented to the officer must be

considered; an officer may not ignore exculpatory facts and consider only inculpatory facts. *Id.* at 1229. If a reasonable person possessing all the information these officers allegedly possessed would have believed Williams' behavior was criminal, then probable cause is present.

Such a reasonable person could not have believed that Williams' actions were criminal. Under Florida law, a pregnant woman who out of necessity drives away from a traffic stop seeking urgent medical care in order to avoid imminent harm to her pregnancy does not commit the felony of driving away from a traffic stop or eluding an officer. Necessity, also called duress under Florida law, is a defense to prosecution for fleeing or eluding a police officer. *See Rowley v. State*, 939 So.2d 298, 300 (Fla. 4th DCA 2006) (noting that necessity, which is also called duress, is defense to prosecution for fleeing or eluding police officer, but concluding that defendant's facts were insufficient to make out the defense). The elements of the defense are,

> 1) the defendant reasonably believed that a danger or emergency existed that he did not intentionally cause; 2) the danger or emergency threatened significant harm to himself or a third person; 3) the threatened harm must have been real, imminent, and impending; 4) the defendant had no reasonable means to avoid the danger or emergency except by committing the crime; 5) the crime must have been committed out

> of duress to avoid the danger or emergency; and 6) the harm the defendant avoided outweighs the harm caused by committing the crime.

Driggers v. State, 917 So.2d 329, 331 (Fla. 5th DCA 2005). An officer who has reasonably trustworthy information that a woman is pregnant and in medical distress, and who observes the woman proceed directly to a nearby hospital emergency room and there request emergency medical treatment, does not have probable cause to pursue a prosecution against her *solely* because he observed her drive away from a traffic stop without first receiving permission. Instead, the officer must also consider those facts of which he has reasonably trustworthy information that indicate the woman was acting under necessity. It is thus material whether the officers had reasonably trustworthy information as to these facts at the time they pursued charges against Williams. There is a genuine question whether the officers possessed such information.[4] Consequently, summary judgment must be denied.

B. False Arrest Claim Against Sheriff Rutherford

The sheriff argues that he is entitled to summary judgment on the false arrest claim because Officers Sirmons and Mills had probable cause to arrest Williams. They had probable cause, according to the

4. The officers do not argue that they considered but for some reason discounted the exculpatory information they received.

Sheriff, because they witnessed her run a red light, drive away from the traffic stop without permission, and resist Sirmons when he first attempted to arrest her. Williams disagrees, maintaining that Sirmons and Mills did not conduct an investigation sufficient under the circumstances to determine whether or not probable cause was present. As discussed above, Officers Sirmons and Mills cannot support a finding of probable cause merely by showing that they possessed facts which in a vacuum would give rise to probable cause. Instead, the probable cause determination is made by viewing all the facts of which the officer has reasonably trustworthy information. There is a genuine question as to whether the officers had reasonably trustworthy information on facts that would overbalance those facts tending toward probable cause. Consequently, the Court cannot grant summary judgment for the sheriff on this claim.

C. Battery Claim Against Sheriff Rutherford

The sheriff submits that the officers did not commit battery in this case because they used only de minimis force to effect an arrest founded on probable cause. This force caused no injury to Williams. Williams acknowledges that a law enforcement officer can use force he reasonably believes necessary to prevent the escape of an arrestee. Williams maintains that there is a genuine question for the jury whether Sirmons and Mills reasonably believed the force they used was necessary to prevent Williams' escape.

Under Florida law, if a police officer uses excessive force to make an arrest, "the ordinarily protected use of force . . . is transformed into a battery." *City of Miami v. Sanders*, 672 So.2d 46, 47 (Fla. 3d DCA 1996). The standard for excessive force under Florida law is similar to the standard for evaluating a claim of excessive force under § 1983. Thus, because the Court denies summary judgment on Williams' § 1983 excessive force claim against the officers as discussed below, the Court also denies the sheriff's motion for summary judgment on Williams' state-law battery claim.

D. Section 1983 Excessive Force Claim Against Officers Sirmons and Mills

The officers argue that they are entitled to summary judgment on Williams' § 1983 excessive force claim for two reasons. First, the officers' use of force was reasonable under the circumstances. Second, the officers are entitled to qualified immunity because a reasonable officer "could have believed their actions to be lawful and necessary based on the circumstances . . . ." (Doc. # 15, at 23.) Moreover, the officers used only de minimis force. Williams responds that the force was unreasonable under the legal framework established by *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989), to evaluate the reasonableness of force used to effect an arrest.

In *Graham*, the Supreme Court explained, "Determining whether the force used to effect a particular seizure is reasonable under the Fourth

Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." 490 U.S. at 396, 109 S.Ct. 1865 (internal quotation marks omitted). To conduct this balancing, courts must give "careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* The evaluation must be made "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* And the evaluation must be tolerant of the fact that police officers often lack time for reflection before they act. *Id.* Finally, the evaluation is objective: an officer's subjective motivations are not considered. *Id.*

The Eleventh Circuit has provided further relief to the Graham framework. In *Nolin v. Isbell*, the court explained that a policeman's use of de minimis force to effect a lawful arrest does not, by itself, "support a claim for excessive force in violation of the Fourth Amendment." 207 F.3d 1253, 1257 (11th Cir.2000). In that case, the policeman threw a seventeen-year-old boy against a van a few feet away, pushed his knee into the boy's back, handcuffed the boy, and searched the boy's groin uncomfortably. *Id.* at 1255. The boy suffered bruising, but did not require medical treatment. *Id.* The appellate court concluded that this force was de minimis. *Id.* at 1258 n. 4. "Painful handcuffing, without more, is

not excessive force in cases where the resulting injuries are minimal." *Rodriguez v. Farrell*, 280 F.3d 1341, 1351 (11th Cir.2002) (citing *Nolin*). Moreover, a common and accepted handcuffing technique is de minimis force even when it results in serious injury, so long as the officer who performed the handcuffing technique did not know that the technique would seriously aggravate a preexisting condition. *Id.* at 1351-53.

Were it not for the fact that Williams was pregnant and seeking emergency medical care in a hospital, the officers' conduct in this case would likely fall under the de minimis force rule. The defendants have not cited any case, however, holding that the application of what would otherwise be de minimis force to a particularly fragile arrestee benefits from the de minimis force rule even if the officers knew the arrestee was particularly fragile. Indeed, the Eleventh Circuit has suggested that an officer's use of common force may be excessive when the officer has reason to know that the arrestee is particularly vulnerable. In *Rodriguez*, the court analyzed an officer's application of a common handcuffing technique to a recovering surgery patient. The technique ultimately resulted in the amputation of the patient's arm. *Rodriguez*, 280 F.3d at 1351. The court found particularly important the fact that the officer did not know about the arrestee's surgery and did not know that the handcuffing "would seriously aggravate the plaintiff's preexisting condition." *Id.* at 1352. Accordingly, the Eleventh Circuit in *Rodriguez* suggested that an officer's use of a common arrest technique may be excessive if the officer knew the

arrestee was particularly likely to be harmed by the technique. There is at least a genuine question whether the officers knew Williams was pregnant and in medical distress, and was therefore particularly vulnerable to what would otherwise be de minimis force.[5] For that reason, the de minimis force rule does not cut the defendants off from potential liability for excessive force at this stage of the case.

Additionally, there is sufficient record evidence to justify the conclusion that Williams' arrest was not founded upon probable cause. Even de minimis force is inappropriate when used to make an arrest without probable cause. *See Nolin*, 207 F.3d at 1258 (distinguishing two cases in which the de minimis force rule was not applied, on basis that "both cases involved arrests without probable cause in which any use of force was inappropriate").

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5. According to Williams, she told Officer Sirmons that she was pregnant when she was first stopped, and yelled the same thing when she arrived at the emergency room. Additionally, several witnesses affied that Williams was obviously pregnant. Finally, Williams was more than seven months pregnant. This record evidence eminently supports the inference that Sirmons and Mills were aware that Williams was pregnant. Moreover, Williams says that she told Officer Sirmons she needed medical care, Williams proceeded directly to the hospital, and Williams requested medical care at the hospital. This record evidence supports the inference that Sirmons and Mills were aware that Williams was in medical distress. Accordingly, there is at least a genuine question as to whether Sirmons and Mills knew that Williams was particularly vulnerable to rough treatment.

Consequently, the Court must analyze the force used under the *Graham* framework. The Court must evaluate the severity of the crime for which Williams was being arrested, whether Williams posed an immediate threat to the officers or others, and whether she was actively resisting or attempting to flee. The crimes for which Officers Sirmons and Mills arrested Williams were neither very severe nor very minor. This part of the analysis thus does not come out decidedly in favor of either side. Under Williams' version of the facts, however, the next two elements in the analysis both favor Williams. At the time Williams was arrested, she was stopped at two locked doors in the hospital emergency room requesting medical help. She was not holding a weapon. She was pregnant and slightly built. She had not made any aggressive movements or threats against anyone in the emergency room. And she faced two officers, each of whom was over six feet tall and weighed more than two hundred pounds. Objectively, then, Williams did not pose an immediate threat. Finally, though Williams had previously fled the officers, she was not actively attempting to flee at the moment she was arrested. Instead, she was simply in the emergency room facing locked doors and asking for medical help. Under these circumstances, Sirmons slammed Williams to the ground with such force that he dislocated his shoulder.[6]

---

6. The officers argue that Sirmons' dislocated shoulder was a result not of the force used to bring Williams to the ground but of Williams' resistance. The evidence on this is conflicting, though, (*see, e.g.*, Doc. # 28-6, at 2) so the Court must presume Williams' evidence is true.

Then, Mills placed his full weight on the prone Williams and took his time handcuffing her.[7] If these are the facts Williams proves at trial, she will have demonstrated that the officers used unreasonable force to arrest her.[8]

The officers do not argue that there was no clearly established law prohibiting the use of unreasonable force at the time they arrested Williams. Instead, they argue that they are entitled to qualified immunity because a reasonable officer in their position could have believed the force they used was lawful and necessary. (Doc. # 15, at 23.) The Court rejects this argument. Under the *Graham* framework discussed above, the Court concludes that a reasonable officer faced with the circumstances described above could not have believed it lawful and necessary to use against a pregnant woman seeking medical treatment in an emergency room the force Sirmons and Mills allegedly used. Accordingly, Sirmons and Mills are not entitled to summary judgment on Williams' excessive force claim under § 1983.

---

7. Williams also suggests that Mills is liable for failing to intervene in Sirmons' use of force. Indeed, an officer is liable for failing to intervene in another officer's use of excessive force. *Priester v. City of Riviera Beach*, 208 F.3d 919, 924 (11th Cir.2000). This liability only arises, though, if the officer is in a position to intervene. *Id.* In this case, there is no suggestion that Sirmons' use of force lasted long enough to give Mills any opportunity to intervene.

8. The officers paint quite a different picture, and it may well be that the evidence at trial bears out the officers' story.

Appendix B

E. Section 1983 Claim Against Sheriff Rutherford for Failure to Train Officers Sirmons and Mills

The sheriff argues that he is not liable for the officers' conduct because the Jacksonville Sheriff's Office properly trains its officers and has no policy or custom of tolerating false arrests or excessive force. (Doc. # 18, at 23.) According to the sheriff, this is demonstrated by the facts that the Jacksonville Sheriff's Office is a fully accredited law enforcement agency, and indeed disciplined its officers for the conduct in this case. (Doc. # 18, at 22-23.) In response, Williams argues weakly that the officers were not trained in the location of local hospitals. (Doc. # 24, at 13.) The failure to provide this training, Williams posits, amounted to deliberate indifference to the rights of individuals in Williams' position.[9] (Doc. # 24, at 13.)

A municipality[10] is not liable for the § 1983 violations of its employees if they were "implement[ing] or execut[ing] a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Dep't of Social Servs. of New*

9. The Court notes that Williams was unable to identify a custom of tolerating excessive force. The sheriff disciplined these officers "well before this lawsuit was commenced . . . ." (Doc. # 18, at 23.) This strongly suggests that the sheriff is intolerant of excessive force.

10. There is no argument that the claim against the sheriff in his official capacity is not a claim against a municipality.

York, 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). A municipality will also be liable for § 1983 violations made pursuant to an unofficial governmental custom. *Id.* at 691, 98 S.Ct. 2018. However, "a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory." *Id.* Where the problematic governmental custom is a failure adequately to train police officers, the municipality will be liable "only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." *City of Canton v. Harris*, 489 U.S. 378, 388, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989). This analysis must focus on "adequacy of the training program in relation to the tasks the particular officers must perform." *Id.* at 390, 109 S.Ct. 1197. Additionally, liability must not attach just because the "injury or accident could have been avoided if an officer had had better or more training . . . ." *Id.* at 391, 109 S.Ct. 1197. Finally, "the identified deficiency in a . . . training program must be closely related to the ultimate injury." *Id.*

The sheriff's failure to train patrol officers on the location of local hospitals is an insufficient basis for § 1983 liability. That deficiency—if it be a deficiency—is not closely related to the excessive force allegedly used in this case. Williams theorizes that, had Sirmons and Mills known they were so close to the hospital, they would have escorted Williams there. (Doc. # 24, at 13.) Perhaps that is true. But the ultimate injury complained of was caused not by a delay in finding the hospital but

by the officers' use of excessive force *in the hospital.* The causal chain connecting the training deficiency with the excessive force simply has too many links. It may well be that Sirmons and Mills did not offer to escort Williams to the hospital because they did not know where the hospital was. And it may well be that Williams only drove off because Sirmons and Mills did not offer to escort her to the hospital. And it may well be that the stress of chasing Williams contributed to the use of excessive force against Williams. This is an insufficiently close connection to justify the conclusion that the sheriff's failure to train patrol officers on the location of local hospitals represented deliberate indifference to the rights of those who may come into contact with the officers. For that reason, the Court grants summary judgment for the sheriff on the § 1983 claim against him.

Accordingly, it is

ORDERED, ADJUDGED, and DECREED:

1. The Motion for Summary Judgment (Doc. # 15) filed by Sirmons and Mills on February 25, 2008, is hereby DENIED.

2. Defendant Sheriff John Rutherford's Motion for Summary Judgment (Doc. # 18), filed on February 28, 2008, is hereby GRANTED IN PART and DENIED IN PART. Summary judgment is hereby granted in favor of Sheriff Rutherford on Williams' claim in Count V of the amended complaint (Doc. # 4) under 42 U.S.C. § 1983. Summary judgment is denied as to all other claims in the amended complaint (Doc. # 4).

DONE and **ORDERED** in Chambers in Jacksonville, Florida, this 27th day of May 2008.

s/ Virginia M. Hernandez Covington
VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISRICT JUDGE

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DENYING PETITION FOR REHEARING DATED AND FILED MARCH 13, 2009

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 08-13218-CC

MELANIE WILLIAMS,

Plaintiff-Appellee.

versus

MATTHEW SIRMONS, JAMES MILLS,

Defendants-Appellants,

SHERIFF JOHN RUTHERFORD
of the Jacksonville Sheriff's Office,

Defendant.

On Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before: BIRCH, HULL and KRAVITCH, Circuit Judges.

Appendix C

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

s/ Phyllis Kravitch
UNITED STATES CIRCUIT JUDGE

APPENDIX D — RELEVANT STATUTES

Florida Statutes, § 316.1935. Fleeing or attempting to elude a law enforcement officer; aggravated fleeing or eluding

(1) It is unlawful for the operator of any vehicle, having knowledge that he or she has been ordered to stop such vehicle by a duly authorized law enforcement officer, willfully to refuse or fail to stop the vehicle in compliance with such order or, having stopped in knowing compliance with such order, willfully to flee in an attempt to elude the officer, and a person who violates this subsection commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(2) Any person who willfully flees or attempts to elude a law enforcement officer in an authorized law enforcement patrol vehicle, with agency insignia and other jurisdictional markings prominently displayed on the vehicle, with siren and lights activated commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(3) Any person who willfully flees or attempts to elude a law enforcement officer in an authorized law enforcement patrol vehicle, with agency insignia and other jurisdictional markings prominently displayed on the vehicle, with siren and lights activated, and during the course of the fleeing or attempted eluding:

(a) Drives at high speed, or in any manner which demonstrates a wanton disregard for the safety of persons or property, commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Drives at high speed, or in any manner which demonstrates a wanton disregard for the safety of persons or property, and causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle, commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084. Notwithstanding any other provision of law, the court shall sentence any person convicted of committing the offense described in this paragraph to a mandatory minimum sentence of 3 years imprisonment. Nothing in this paragraph shall prevent a court from imposing a greater sentence of incarceration as authorized by law.

(4) Any person who, in the course of unlawfully leaving or attempting to leave the scene of a crash in violation of § 316.027 or § 316.061, having knowledge of an order to stop by a duly authorized law enforcement officer, willfully refuses or fails to stop in compliance with such an order, or having stopped in knowing compliance with such order, willfully flees in an attempt to elude such officer and, as a result of such fleeing or eluding:

Appendix D

(a) Causes injury to another person or causes damage to any property belonging to another person, commits aggravated fleeing or eluding, a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) Causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle, commits aggravated fleeing or eluding with serious bodily injury or death, a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

The felony of aggravated fleeing or eluding and the felony of aggravated fleeing or eluding with serious bodily injury or death constitute separate offenses for which a person may be charged, in addition to the offenses under §§ 316.027 and 316.061, relating to unlawfully leaving the scene of a crash, which the person had been in the course of committing or attempting to commit when the order to stop was given. Notwithstanding any other provision of law, the court shall sentence any person convicted of committing aggravated fleeing or eluding with serious bodily injury or death to a mandatory minimum sentence of 3 years imprisonment. Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law.

(5) The court shall revoke, for a period not less than 1 year nor exceeding 5 years, the driver's license of any operator of a motor vehicle convicted of a violation of subsection (1), subsection (2), subsection (3), or subsection (4).

(6) Notwithstanding § 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of this section. A person convicted and sentenced to a mandatory minimum term of incarceration under paragraph (3)(b) or paragraph (4)(b) is not eligible for statutory gain-time under § 944.275 or any form of discretionary early release, other than pardon or executive clemency or conditional medical release under § 947.149, prior to serving the mandatory minimum sentence.

(7) Any motor vehicle involved in a violation of this section is deemed to be contraband, which may be seized by a law enforcement agency and is subject to forfeiture pursuant to s§ 932.701-932.704. Any vehicle not required to be titled under the laws of this state is presumed to be the property of the person in possession of the vehicle.

Appendix D

2004 Amendments to F.S. 316.1935

Laws 2004, c. 2004-388, § 1, in subsec. (1), substituted "felony of the third degree" for "misdemeanor of the first degree" following "commits a", and added a reference to § 775.084 at the end; in subsec. (3), redesignated the former subsection as par. (a), and added par. (b), relating to causing serious bodily injury of death; rewrote subsec. (4); in subsec. (5), substituted "shall revoke, for a period of not less than 1 year nor exceeding 5 years" for "may revoke, for a period not to exceed 1 year" following "The court"; and added subsecs. (6) and (7), relating to sentencing and to seizure of vehicles, respectively. Subsec. (4) formerly read:

"(4) Any person who, in the course of unlawfully leaving or attempting to leave the scene of a crash in violation of § 316.027 or § 316.061, having knowledge of an order to stop by a duly authorized law enforcement officer:

"(a) Willfully refuses or fails to stop in compliance with such an order, or having stopped in knowing compliance with such order, willfully flees in an attempt to elude such officer; and

"(b) As a result of such fleeing or eluding, causes injury to another person or causes damage to any property belonging to another person

"commits aggravated fleeing or eluding, a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084. The felony of aggravated fleeing or eluding constitutes a separate offense for which a person may be charged, in addition to the offense of unlawfully leaving the scene of a crash which the person had been in the course of committing or attempting to commit when the order to stop was given."

Laws 2004, c. 2004-388, § 5, provides:

"This act shall take effect July 1, 2004, and shall apply to offenses committed on or after that date."

Appendix D

Florida Statutes, § 843.02. Resisting officer without violence to his or her person

Whoever shall resist, obstruct, or oppose any officer as defined in § 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Parole Commission or any administrative aide or supervisor employed by the commission; county probation officer; parole and probation supervisor; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2)

No. 08-1530

Supreme Court, U.S
FILED
SEP 8 - 2009
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In The
Supreme Court of the United States

MATTHEW SIRMONS and JAMES MILLS,
in their individual capacities,

Petitioners,

v.

MELANIE WILLIAMS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When Deputies Matthew Sirmons and James Mills stopped the pregnant Melanie Williams for running a red light, she immediately informed them she was pregnant, bleeding, and on her way to the nearby hospital for emergency care. Were Sirmons and Mills violating clearly-established law when they later tackled and arrested Williams at the hospital despite her need for emergency medical care, or were these law enforcement officers protected by qualified immunity *despite* the absence of probable cause for arrest?

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CONSTITUTIONAL AND FEDERAL STATUTORY PROVISIONS INVOLVED

Respondent Melanie Williams filed suit seeking damages, in part, for the Petitioners' violation of her Fourth Amendment right to be free from unreasonable search and seizure, as effectuated by 42 U.S.C. § 1983.

STATEMENT OF THE CASE

The law controlling this case is unremarkable. The facts, on the other hand, are outrageous. Because the lower court decision did not create a split of authority between or among the circuits, and no other reason to grant the Petition for Writ of Certiorari exists, this Court should deny the Petition for Writ of Certiorari *instanter*.

The Petitioners, Deputies Matthew Sirmons and James Mills, wrongly arrested and assaulted Respondent Melanie Williams. Sirmons and Mills intransigently refuse to concede the offensiveness of their misconduct, misconduct so outrageous the Eleventh Circuit deemed it "reprehensible." (Pet. App. A at 17a.)[1] In order to defend their reprehensible misconduct, Deputies Sirmons and Mills attempt to

[1] Citations to the district court record will read (Doc. ___ at [page number]) and citations to the lower court opinions will read (Pet. App. ___ at [page number]). Citations to the Petition will read (Pet. ___ at [page number]).

twist an unremarkable lower court decision into a decision that they describe as a "first . . . in our nation's history[.]" (Pet. at 7.)

To the contrary, the lower court's decision simply reiterates longstanding federal law holding that probable cause is "judged not with clinical detachment but with a common sense view to the realities of life." *Marx v. Gumbinner*, 905 F.2d 1503, 1506 (11th Cir.1990). The Eleventh Circuit concluded that no reasonable officer acting with common sense could have concluded that probable cause to arrest existed when Sirmons and Mills arrested and used force to effectuate Williams's arrest. In doing so, the Eleventh Circuit affirmed the district court, which had reached that same conclusion. (Pet. App. B at 35a.)

At bottom, two different courts have concluded that this arrest was unsupported by common sense. This Court should reject Sirmons and Mills's suggestion that the Eleventh Circuit's decision to require law enforcement officers to act with common sense "places officers in the untenable position of having to speculate about affirmative defenses." (Pet. at 3.) Sirmons and Mills did not need to speculate. Williams told them she was pregnant and bleeding and seeking emergency care to treat her condition. Therefore, her subsequent conduct did not rise to the level of even arguable probable cause for a crime having been committed. Because no serious review of the facts could lead to a different conclusion, the Petition for Writ of Certiorari should be denied.

1. Facts Giving Rise to Case

Williams acknowledges that the majority of facts described by Sirmons and Mills come straight from the Eleventh Circuit's opinion below. Nevertheless, Sirmons and Mills added facts which are disputed or slanted – and labeled them "undisputed" – and also omitted facts which are necessary for the Court to make a fair determination of whether to hear this case on the merits. Therefore, Williams has re-written the facts in a manner that tracks Sirmons and Mills's Petition but also corrects or adds facts to render the facts before the Court more accurate. These supplemental facts include citations to the record before the district court, or citations to the district court opinion.

On a late Sunday afternoon,[2] May 8, 2005, Williams, seven and a half months pregnant with her first child (Doc. 28-1 at 74-75), began bleeding vaginally. Understandably, Williams feared she could lose her unborn child. (Doc. 28-1 at 79.) She did not know it at the time, but she had begun pre-term labor. (Doc. 28-2 at 1.) Upon recognizing the seriousness of her bleeding that late afternoon, she immediately left her home and began driving to the hospital with which her obstetrician had a relationship. (Pet. App. B at 20a.) En route, she dialed 911.

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[2] Although the Eleventh Circuit opinion states that Williams noticed she was bleeding "in the early hours" of May 8, 2005, that is factually incorrect. Williams noticed the bleeding in the late afternoon. (Doc. 28-1 at 79.)

The 911 operator asked if she wanted to pull over and await an ambulance, but Williams declined because she believed she would make it to the hospital sooner continuing on herself. (Pet. App. B at 20a.)

In her haste to receive medical attention, Williams drove through one red light. In turn, Sirmons and Mills signaled Williams to stop her vehicle. Williams stopped; this traffic stop took place less than one mile from her hospital. After Sirmons approached her car, Williams explained to him she was pregnant, bleeding, and on her way to the hospital. Sirmons appeared unconcerned and requested Williams's driver's license and proof of insurance and inquired whether she owned the car she was driving. After receiving the requested documents, Sirmons returned to his patrol car to investigate Williams's identity and issue her a ticket. Meanwhile, Williams, afraid she would lose her baby, drove directly to the hospital emergency vehicle bay for emergency care. (Pet. App. B at 21a.) Sirmons and Mills followed.

As Williams exited her car to seek emergency medical treatment, Sirmons grabbed her arm and told the pregnant and bleeding Williams that she was going to jail. Williams pulled free, ran towards the emergency room, and yelled, "Help! I'm pregnant and bleeding." Sirmons and Mills suggest to this Court that a video of this scene shows a rapidly sprinting woman "who is not visibly pregnant." (Pet. at 4.) That assertion is the Petitioners' counsel's non-record-supported *interpretation* of the video – no witness

testified that the video showed a woman "not visibly pregnant." To the contrary, several witnesses in the emergency room affied that Williams was "obviously pregnant" when she ran into the hospital. (Pet. App. B at 33a n.5.)

According to witnesses waiting in the emergency room at the time, Williams ran into the emergency room but stopped at two locked doors, all the while begging for help. (Pet. App. B. at 21a.) At this time, Sirmons jumped on Williams and slammed her to the floor (Pet. App. B at 21a), *slamming her down* with such force that he managed to dislocate his own shoulder in the process. (Pet. App. B at 21a.) For purposes of the record, the Eleventh Circuit and Sirmons and Mills described this as a "fall," however, the district court described Sirmons *slamming* Williams to the ground, consistent with witness affidavits. (Pet. App. B at 21a; Doc. 28-6 at 2; Doc. 28-7 at 2.) Both before and as Sirmons slammed Williams to the floor, a witness heard Williams screaming, "why are you doing this to me," "blood is coming out of me," and "I am pregnant." (Doc. 28-5 ¶14.) Additionally, the witness heard Williams say loudly and clearly, "I tried to tell you what was going on but you would not listen." (Doc. 28-5 ¶15.)

Mills replaced Sirmons on Williams's back and knelt on her back as she pleaded with him to get off of her because of her pregnancy; Mills handcuffed Williams, removed her from the hospital, and placed her in a patrol car in order to take Williams to jail. A nurse insisted, over Sirmons's objection, that she be

allowed to examine Williams. (Pet. App. B 22a n.2.) The nurse explained that Sirmons and Mills showed no interest in Williams's medical condition, even as Williams cried that she was "hemorrhaging" and pregnant. (Doc. 33-1 at 63-64; Doc. 28-8 at 3.) Based on the nurse's examination, the nurse insisted that Williams be admitted to the hospital. Upon full examination, Williams was indeed confirmed to be bleeding and in premature labor. Her physicians successfully staved off the premature labor and Williams spent the next ten days in the hospital, undergoing obstetric care. The baby was born on June 1, several weeks prematurely. (Doc. 28-1 at 25.)

2. District Court Proceedings

Williams sued Sirmons and Mills in their individual capacities for false arrest in violation of her Fourth Amendment rights. Her Amended Complaint also contained a federal civil rights claim against Sirmons and Mills for engaging in excessive force against Williams, and a state law claim for malicious prosecution. Williams sued the Sheriff of Jacksonville in his official capacity ("Sheriff"), alleging a federal *Monell*[3] claim and state law false arrest and battery claims.

The Defendants moved for summary judgment on all claims. The district court granted the Sheriff's

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[3] *Monell v. Dep't of Social Servs. of New York*, 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

Motion as to the *Monell* claim, denied his motion as to the state law claims, and denied Sirmons and Mills's motion. (Pet. App. B.) In denying Sirmons and Mills's motion, the district court explained that based on the totality of the circumstances these officers could not have lawfully arrested Williams, and thus any use of force violated the Fourth Amendment. (Pet. App. B at 33a.) The district court also held that even if the arrest was lawful, the force used was excessive. (Pet. App. B at 34a-35a.) The district court explained:

> Under the [*Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989)] framework [ ], the Court concludes that a reasonable officer faced with the circumstances described above could not have believed it lawful and necessary to use against a pregnant woman seeking medical treatment in an emergency room the force Sirmons and Mills allegedly used.

(Pet. App. B at 35a.)

3. Decision of the Eleventh Circuit

Sirmons and Mills took an interlocutory appeal to the Eleventh Circuit based on the district court's denial of their purported entitlement to qualified immunity on these facts. The Eleventh Circuit affirmed the district court's conclusion that Sirmons and Mills's arrest of Williams violated the Fourth Amendment. (Pet. App. A at 11a-12a.) It reversed the district court's conclusion that if the arrest was lawful, then the use of force was excessive. That

latter conclusion is irrelevant for purposes of the Court's review of Sirmons and Mills's Petition for Writ of Certiorari.

In affirming the denial of qualified immunity for the unlawful arrest, the Eleventh Circuit explained that probable cause determinations "involve an examination of all facts and circumstances within an officer's knowledge at the time of the arrest." (Pet. App. A at 9a (citation omitted).) Since Sirmons and Mills *knew* Williams was pregnant and bleeding, they knew that she passed through the red light and rushed to the emergency room *not to break the law*, but so as to seek necessary emergency medical care. Based on the totality of those circumstances, Sirmons and Mills – and any reasonable officer – would have known that there was no probable cause to arrest Williams and therefore no authority to use any force against Williams. In so holding, the Eleventh Circuit relied upon *Estate of Dietrich v. Burrows*, 167 F.3d 1007 (6th Cir.1999); *Carroll v. United States*, 267 U.S. 132, 162, 45 S.Ct. 280, 69 L.Ed. 543 (1925); *Marx*, 905 F.2d at 1506; and *Radich v. Goode*, 886 F.2d 1391, 1396-97 (3d Cir.1989). Despite the bevy of support for this unremarkable conclusion, Sirmons and Mills asked the Eleventh Circuit to rehear the decision and review the panel decision *en banc*. Not surprisingly, these requests were denied.

REASONS TO DENY THE PETITION

The Eleventh Circuit concluded, like the district court before it, that if officers know a pregnant woman is vaginally bleeding, and know she is seeking emergency care in a hospital because of that bleeding, the officers do not have probable cause to arrest the woman for running a light and driving quickly and directly to the emergency room. Sirmons and Mills submit that such a conclusion is a first for American jurisprudence. Such is hardly the case; rather, the Eleventh Circuit's decision, like the district court's decision before it, is a blow for common sense, and founded on well-settled Constitutional law.

I. THE DECISION BELOW DID NOT CREATE A SPLIT IN THE CIRCUITS, BECAUSE THE DECISION DID NOT CONCLUDE THAT THE OFFICERS HAD PROBABLE CAUSE TO ARREST.

Sirmons and Mills's analysis of the law in this case is in part based on a mistaken interpretation – they submit that the Eleventh Circuit held that despite having probable cause to arrest Williams, they could not do so because of Williams's affirmative defense of necessity. The Eleventh Circuit did not so conclude. The Eleventh Circuit concluded that because Sirmons and Mills had knowledge of facts and circumstances which established the affirmative defense of necessity, Sirmons and Mills *never had probable cause* to arrest because Williams committed no crime. (Pet. App. A at 10a.) It is axiomatic that an

officer without probable cause to arrest cannot so arrest without violating the constitutional rights of the arrestee. *See, e.g., Michigan v. DiFillippo*, 443 U.S. 31, 36, 99 S.Ct. 2627, 61 L.Ed.2d 343 (1979) ("It is not disputed that the Constitution permits an officer to arrest a suspect without a warrant *if* there is probable cause to believe that the suspect has committed or is committing an offense") (emphasis added).

Cases from every circuit, and this Court, support that basic fact of Constitutional law. In the lower court opinion, the Eleventh Circuit matter-of-factly explained how cases from the Sixth Circuit, the Third Circuit, the Eleventh Circuit, and this Court supported its determination. Sirmons and Mills can point to no split of authority on this point; rather, they take general case law of limited applicability to the instant case and twist the lower court's opinion so as to attempt to create a conflict where none exists.

To undergird its well-reasoned conclusion, the Eleventh Circuit began with *Estate of Dietrich v. Burrows*, 167 F.3d 1007 (6th Cir.1999). In *Estate of Dietrich*, law enforcement officers confronted private security officers carrying concealed weapons, and arrested the investigators for violating an Ohio statutory prohibition on carrying concealed weapons. *Id.* at 1011. The arresting officers conceded, at least in part, that they knew the private actors were carrying the weapons as part of their work as security officers. *Id.* Ohio law included an exception allowing concealed carry where the individual carries the

weapon pursuant to his work. *Id.* at 1011-12. Thus, the Sixth Circuit concluded that the arresting officers violated the constitutional rights of the private security officers. *Id.* at 1012.

Despite violating the security officers' Fourth Amendment rights, the law enforcement officers in *Estate of Dietrich* argued they were entitled to qualified immunity because it was not "clearly established" in 1991 that a police officer must analyze the validity of an arrestee's claim of an affirmative defense to a charge of carrying a concealed firearm before effecting an arrest for that crime. *Id.* The Sixth Circuit rejected that argument, explaining that the law enforcement officers were misstating the "relevant inquiry." *Id.* The relevant inquiry was to consider all the facts within the officer's knowledge at the time of arrest, to see if they had facts that rose to the level of probable cause. *Id.* Since the officers knew the private security officers were carrying their weapons pursuant to their employment, the law enforcement officers knew they did not have probable cause to arrest them, in light of the explicit exception in Ohio's concealed carry law. *Id.* at 1012-13.

Sirmons and Mills make the same mistake in the instant case. They suggest that no precedential authority "clearly established" that they had to consider all affirmative defenses before making an arrest in the instant case. That is not the relevant inquiry. The relevant inquiry is, "what did Sirmons and Mills know when they arrested Williams?" The answer is identical to the answer in *Estate of*

Dietrich: they knew that Williams possessed an affirmative defense to their allegations of law-breaking, in that she was pregnant, bleeding, and seeking emergency care as she rushed to the hospital. In light of that knowledge regarding Williams acting out of *necessity (a/k/a duress)*, Sirmons and Mills cannot credibly say they had probable cause to arrest her.

Just as carrying a weapon pursuant to your business is an exception to Ohio's law prohibiting concealed carry of weapons, acting out of necessity or duress is an affirmative defense at Florida law to the crime of fleeing or eluding a police officer. *See Rowley v. State*, 939 So.2d 298, 300 (Fla.Ct.App.2006). Sirmons and Mills knew Williams was pregnant, bleeding, in distress, and on her way to the hospital when they stopped her. They then observed her drive directly to the hospital for that emergency treatment she told them she needed. "For this reason, the deputies lacked arguable – much less actual – probable cause to arrest, even though the circumstances established that Williams met all elements of the offense of fleeing or eluding a police officer." (Pet. App. A at 11a.)

The Eleventh Circuit held that Sirmons and Mills did not have probable cause to arrest Williams. If no probable cause authorizes an arrest, any use of force to effectuate that arrest violates the Fourth Amendment. *See Jackson v. Sauls*, 206 F.3d 1156 (11th Cir.2000). That was the proper principle to apply to the instant case, and that is why qualified

immunity did not protect Sirmons and Mills. In reaching that same conclusion on the facts before it in *Estate of Dietrich*, the Sixth Circuit explained that the principle was so basic that the court could reach all the way back to *Carroll v. United States*, 267 U.S. 132, 162, 45 S.Ct. 280, 69 L.Ed. 543 (1925), to support the decision. And the applicability of *Carroll* is obvious: *Carroll* holds in part that probable cause must be based on an examination of all the facts within the arresting officer's knowledge at the time of arrest. *Id.* Simply put, the holding of *Estate of Dietrich*, and the holding below, are unremarkable.

Sirmons and Mills, however, submit that the "practical effect" of *Estate of Dietrich* – and therefore the lower court's decision here – is to require a police officer to "study and understand all the legally cognizable affirmative defenses recognized by a state's laws . . . and then apply them perfectly in the field[.]" (Pet. Br. at 11.) That overstates the import of both cases. These cases simply task the officer with taking "a common sense view to the realities of normal life[.]" *Marx*, 905 F.3d at 1506. When confronted with a security guard carrying a weapon, an Ohio officer is expected to know the basic exceptions to Ohio's concealed carry prohibition. Similarly, when confronted with a pregnant and bleeding woman on her way to the hospital, *a Florida officer is expected to know she needs an escort to the hospital, not to be put under arrest and taken to jail.*

The *Fridely v. Horrighs*, 291 F.3d 867 (6th Cir.2002) case has no bearing on the instant case. The plaintiff in that case contended that the arresting officers *should have known* that he had an entrapment defense to the crime with which he was charged. The Sixth Circuit rejected that argument, and held that an officer is "not required" to inquire into facts and circumstances in an effort to discover if the suspect has an affirmative defense. *Id.* at 873. But here no one is faulting Sirmons and Mills *for failing to so inquire*, for failing to *discover* that Williams was pregnant and bleeding. Rather, Sirmons and Mills knew she was pregnant and bleeding and in need of emergency care. The issue is, what should they have done with that information once in their possession? *Fridely* does not speak to that question. *Estate of Dietrich*, and the lower court decision, do speak to that question.

It is well settled that an officer cannot arrest an individual if he does not have probable cause, or even arguable probable cause, to effect that arrest. The Eleventh Circuit relied on that well-settled principle in affirming the district court's decision to deny Sirmons and Mills qualified immunity for their arrest of Williams. For this reason, no split in the circuits was created by the lower court's decision and the Petition for Writ of Certiorari should be denied.

II. THE ELEVENTH CIRCUIT'S DECISION IS NOT CONTRARY TO THIS COURT'S QUALIFIED IMMUNITY PRECEDENT.

Much of this section of Sirmons and Mills's Petition for Writ of Certiorari rehashes the prior section of the brief. The argument here, such as it is, suggests that officers will in some cases *reasonably*, but mistakenly, conclude that probable cause is present and subsequently not be held personally liable. *See Anderson v. Creighton*, 483 U.S. 635 (1987). From that *Anderson* seed grew the flower of "arguable probable cause" in subsequent case law; in this case, Sirmons and Mills suggest that "certainly arguable probable [cause] remained to believe that [Williams] had committed at least one of the crimes for which she was arrested" when she was arrested. (Pet. at 17.) That argument has several flaws, any one of which is fatal.

First, no reasonable officer has been advanced to defend Sirmons and Mills. In fact, the Sheriff "disciplined Sirmons and Mills for [the] misconduct" underlying this case. (Pet. App. B at 23a.) It is respectfully suggested that if a reasonable officer could have believed tackling and slamming the pregnant and bleeding Melanie Williams to the ground in an emergency room was defensible, then the Sheriff would not have suspended these two officers for ten days. (Doc. 23-12 at 1, 7.)

Second, the district court and the Eleventh Circuit considered that question and rejected out of

hand the supposition that a reasonable officer could have behaved in the manner which Sirmons and Mills behaved when confronted with Williams and her pre-term labor. In fact, the Eleventh Circuit agreed with the district court's conclusion that Sirmons and Mills's behavior was "reprehensible." When a district court, a panel of a circuit court, and the *en banc* circuit court all conclude that Sirmons and Mills's conduct was indefensible, it is impossible to say that any reasonable officer could think otherwise.

And finally, the opinions Sirmons and Mills offer this Court to justify this arrest as supported by "arguable probable cause" are not on-point or persuasive. Neither *Sullivan v. City of Pembroke Pines*, 161 Fed. Appx. 906 (11th Cir.2006) nor *Zivojinovich v. Barner*, 525 F.3d 1059 (11th Cir.2008) describe circumstances where the arrestee was facing serious medical consequences requiring conduct that otherwise could be considered unlawful.

Where both the federal courts and the Sheriff of Jacksonville have concluded that Sirmons and Mills acted without lawful authority in arresting Williams, one would be surprised to find any precedent that conflicts with the decision in the instant case. Sirmons and Mills cannot offer Supreme Court case law in conflict with the instant case because there is none.

III. THIS CASE DOES NOT HAVE SIGNIFICANT PUBLIC POLICY IMPLICATIONS FOR LAW ENFORCEMENT AND CRIME PREVENTION.

This case stands for a very simple, defensible proposition of law that does not even arguably have "significant public policy implications," at least in any negative sense. Simply put, when faced with a pregnant woman who complies with an initial traffic stop and immediately asserts she is pregnant, bleeding, and in need of emergency care, and behaves in all ways consistently with her assertions, law enforcement officers must refrain from jeopardizing the woman's, or her child's, life. Qualified immunity continues to afford an "accommodation for reasonable error[.]" *Hunter v. Bryant*, 502 U.S. 224, 229 (1991). That principle is unchanged. The error here *was unreasonable, and the law does not require accommodation for unreasonable error*. After the lower court's decision, law enforcement officers are still not required to "err always 'on the side of caution' because they fear being sued." *Id. quoting Davis v. Scherer*, 468 U.S. 183, 196 (1984). Instead, officers are expected – as they always have been – to act reasonably. Sirmons and Mills behaved reprehensibly, and effected an unlawful arrest on a pregnant woman in immediate need of medical care. The only public policy implication of this case for law enforcement is a positive one: don't act reprehensibly.

CONCLUSION

The Eleventh Circuit affirmed the district court's conclusion that Sirmons and Mills illegally arrested Melanie Williams based on well-settled principles of law, dating all the way back to the 1920's. The decision does not create a conflict between or among the circuit courts, and no other reason to grant the Petition for Writ of Certiorari exists. For all the reasons stated above and in the lower court decisions, Williams respectfully prays that the Supreme Court deny the Petition for Writ of Certiorari and refuse to hear the case on the merits.

Respectfully Submitted,

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